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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,730	03/29/2004	Louis Garneau	GLO-0004	4816
23413 7590 03/24/2009 CANTOR COLBURN, LLP 20 Church Street 22nd Floor Hartford, CT 06103				
EXAMINER TOMPKINS, ALISSA JILL				
ART UNIT		PAPER NUMBER		
3765				
NOTIFICATION DATE		DELIVERY MODE		
03/24/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptopatentmail@cantorcolburn.com

Office Action Summary

Application No.

10/812,730

Applicant(s)

GARNEAU, LOUIS

Examiner

ALISSA J. TOMPKINS

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's amendment filed on 8/6/2008 has been received. Claims 1-41 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 15, 16, 23, 24, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Hogan (U.S. 2005/0066423). Hogan discloses a multi-layer seat pad for a cyclist garment (Paragraph 30) comprising, an inner layer 40 for contacting the cyclist, an outer layer 44 for affixing to the garment and a compressible, resilient middle layer 42 disposed between the outer and inner layers. The inner layer and/or the middle layer delimits an outer perimeter of the seat pad. The outer layer covers less than all of the inner layer (Figure 3 a-d) so as to be disposed out of contact with a portion of the

outer perimeter. The outer layer includes a shape and a size different than a shape and a size of the inner layer such that the outer layer does not complement the inner layer (Figure 3 a-d). The outer layer has a width that is less than a width of the inner layer. The outer layer along includes a length less than a length of the inner layer (Figure 3d). The inner layer includes a thigh portion for contacting a thigh area of the cyclist and wherein the outer layer does not cover the thigh portion of the inner layer such that the thigh portion is affixed directly to the garment (Figures 3 a-d). The inner layer comprises a rear portion and an opposite front portion. The front portion has a width less than that of the rear portion. The rear portion is for contacting the buttocks region of the cyclist and the front portion for contacting a crotch and lower abdominal region of the cyclist (Figure 3a). The outer layer is a generally planar, elongate member which does not complement a size and/or shape of the inner layer (Figures 3a and 3c). The inner, middle, and outer layers are fixed together such that the seat pad comprises a generally planar elongated member having a front end and an opposing rear end, the rear end being wider than the front end (Figure 3d). Hogan is considered to have a central area for contacting a buttocks and a crotch of a cyclist, the central area extending from the rear end towards the front end of the seat pad and being disposed centrally along a longitudinal axis of the seat pad. An outer area is disposed around a central area and contacts the upper thigh of the cyclist. The inner, middle, and outer layers are all considered to be bonded together. It is well known in the art that "bonded" means to adhere.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 12, 13, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan in view of Lukens (U.S. 2003/0163076). Hogan discloses the invention substantially as applied in claims 1, 23, and 29 above. However, Hogan is missing perforations that traverse through the seat pad. Lukens shows an athletic cup protector comprising an outer layer 14 and an inner layer 12. The outer layer includes a width and a length that are less than a width and the length of the inner layer (Figures 6 and 7). The protector comprises a plurality of perforations that traverse through all of the layers (Paragraph 27). It is noted by the Examiner that the claim language of claims 12 and 13 is considered to be purely functional and has not been given any additional weight. It is also noted that when the athletic protector is worn, the inner layer would contact the wearer, while the outer layer would be in contact with the garment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the perforations that traverse through all layers of Lukens to modify the seat pad of Hogan in order to provide a seat pad that has proper ventilation in order to ensure comfort for the wearer.

Claims 9-11, 25-28, and 36-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan in view of Lukens in further view of Yates (U.S. 6,547,327). Hogan and Lukens disclose the invention as applied above. However, they are missing perforations that have recesses. Yates shows a seat pad comprising a plurality of perforations (Figure 1). Recesses are formed around the perforated areas. Each perforation comprises a recess inset into a thickness of the seat pad and a hole formed through the seat pad at the recess. The recesses comprise permanently compressed portions of the seat pad. The perforations are located all over the seat pad including the buttocks, crotch, and lower abdominal region. It would have been obvious to have first recesses disposed at the inner layer and second recessed disposed at the outer layer, such that the holes traverse through the seat pad from the first recess to the second recess. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the seat pad with recessed perforations of Yates to modify the perforations that traverse through all layers of the athletic protector of Lukens and the seat pad of Hogan to provide a garment with a seat pad having a breathable cushion to conform to the wearer and provide supreme comfort.

As for claims 25-28, Hogan, Lukens, and Yates do not state the method of manufacturing a multi-layer seat pad for a cyclist garment, but it would have been obvious that the method of manufacture would produce the device claimed.

Claims 14, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan in view of Gameau (U.S. 6,393,618). Hogan discloses the invention substantially as disclosed in claims 1, 23, and 29 above. However, Hogan is a

multilayer foam. Garneau discloses a multilayer seat pad for a cyclist pant comprising, an inner layer 40 for contacting the cyclist, an outer layer 42 for affixing to a garment, and a compressible, resilient middle layer 38 disposed between the outer and inner layers. The outer layer is adjacent to the compressible, resilient layer. The seat pad can be attached to a garment such as cycling shorts or pants (Figure 6). The intermediate layer is made of a thick compressible open cell foam such as polyurethane. The inner layer and outer layer are made from a synthetic material such as a brushed micro-fiber polyester or a polyester felt (Column 3, 37-45). It is noted by the Examiner that the applicant's specification states that the inner layer is formed of " a polyester, or more preferably a brushed micro-fiber polyester (Paragraph 0047)." The inner layer and outer layer preferably have a thickness between 0.5 to 1 mm (Column 3, 40-41 and 43-44). The inner layer includes a thigh portion for contacting a thigh area of a cyclist, wherein the outer layer does not cover the thigh portion of the inner layer (Figure 6). The generally planar outer layer includes a shape and a size different than the shape and size of the inner layer such that the outer layer does not complement the inner layer. The inner layer comprises a rear portion and a front portion, wherein the front portion has a width less than that of the rear portion. The rear portion is for contacting the buttocks region of the cyclist and the front portion for contacting and crotch and lower abdominal region of the cyclist. The inner, middle, and outer layers are fixed together to form an elongated member having a front end and an opposing rear end, the rear end being wider than the front end. The seat pad further comprises a central area for contacting a buttocks and a crotch of the cyclist, extending from the rear

end towards the front end of the seat pad and being disposed centrally about a longitudinal axis of the seat pad. An outer area is disposed around the central area and contacts the upper thigh area of the cyclist (Figure 2). Garneau shows a seat pad wherein the inner and outer layers comprise a woven cloth-like material and the middle layer comprises a foam material. It would have been obvious to use foam having a plurality of foam layers in order to provide more cushion and comfort to the wearer. The central area includes a thickness greater than the thickness of the outer area (Figures 3 and 4). As for the rest of claim 17, the claim does not define what is meant by "portion," therefore Garneau is considered to meet the limitations of this claim. The multi-layer seat pad further comprises permanently compressed regions. The limitation "formed as a line for providing flexibility to the seat pad," disclosed in claim 18 is considered to be purely functional and has not been given any additional weight. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the seat pad of Garneau to modify the seat pad of Hogan in order to provide a seat pad that is extremely comfortable for the wearer.

Claims 19-22 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan. The applicant's specification does not provide any criticality as to why the outer layer includes a surface area that is an approximate percentage compared to the surface area of the inner layer. Although Hogan does not state any specific surface areas, it would have been obvious to have surface areas as claimed by applicant.

Response to Arguments

Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hogan (U.S. 2005/0223478) shows a seat pad for cyclists shorts. Krent (U.S. 5,168, 576) shows a protective device having perforations there through.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALISSA J. TOMPKINS whose telephone number is (571)272-3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa J. Tompkins/
Examiner, Art Unit 3765

/Gary L. Welch/

Supervisory Patent Examiner, Art Unit 3765

